

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAMES FLETCHER, JR.,
Plaintiff,
vs.
JEROME BOGUCKI, et al.,
Defendants. } No. 20 C 4768
Chicago, Illinois
September 28, 2022
10:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS -
Telephonic Motion Hearing
BEFORE THE HONORABLE ANDREA R. WOOD

APPEARANCES (Telephonically):

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1 (Proceedings heard telephonically:)

2 THE COURT: Good morning. This is Judge Wood joining
3 the line. I believe we are ready to call the case, so my
4 courtroom deputy will do that, and then we'll get appearances
5 from counsel.

6 Laritza?

7 THE CLERK: Calling case 20 CV 4768, Fletcher, Jr.
8 versus Bogucki, et al.; for status.

9 THE COURT: Okay. Do we have plaintiff's counsel?

10 MS. GARCIA: Yes. Mariah Garcia for the plaintiff.

11 THE COURT: Okay. And let's start with counsel for
12 the City.

13 MR. MICHALIK: Good morning, Your Honor. Paul
14 Michalik on behalf of Defendant City.

15 THE COURT: Thank you. And do we have counsel for
16 our individual defendants?

17 MS. BITOY: Yes. Good morning, Your Honor. Jennifer
18 Bitoy on behalf of the individual defendants.

19 THE COURT: Okay. And then I imagine we may have
20 counsel for our subpoena respondent, the State's Attorney's
21 Office?

22 MR. LARIOS: Yes. Good morning, Your Honor.
23 Assistant State's Attorney Miguel Larios for the Cook County
24 State's Attorney's Office.

25 THE COURT: Thank you.

1 Okay. Let's actually start with the motion that's
2 been filed by the defendants to compel the Cook County State's
3 Attorney's Office to produce the Felony Review folder.

4 As I understand it, the plaintiff supports the
5 request.

6 Attorney Larios, what is your office's general
7 position with respect to the request? Are you opposing
8 production?

9 MR. LARIOS: Your Honor, we produced the file but
10 with redactions. I think their issues were with our
11 redactions. My concern was producing, you know,
12 personally-identifiable information.

13 THE COURT: Is that the only thing that's redacting?

14 MR. LARIOS: I believe so.

15 MS. BITOY: Yes. Your Honor --

16 THE COURT: My impression from the motion to compel
17 was that the redactions were broader than that. Perhaps --

18 MS. BITOY: Yes.

19 THE COURT: -- one of the other counsel can explain.

20 MS. BITOY: Yes, Your Honor. Jennifer Bitoy on
21 behalf of the individual defendants.

22 So there's several redactions that were made within
23 the Felony Review folder. It's victim/witness names and
24 contact information, part of Mr. Fletcher's statement. And
25 then notes of additional investigation requests and the State's

1 Attorney's Office reasons for continuing the investigation.
2 And then, finally, there are some undated notes by an
3 unspecified author that has been redacted as well.

4 And so we're seeking those redactions to be removed.

5 THE COURT: And were there any bases provided for the
6 redactions, such as work product privilege or something else?

7 MS. BITOY: Yes. The State's Attorney's Office has
8 claimed that the information is protected by work product,
9 which we don't agree with.

10 THE COURT: Did they provide a separate privilege
11 log?

12 MS. BITOY: They did provide a privilege log.
13 However, it's a bit vague, and some of the redactions aren't
14 consistent.

15 And so we've sort of -- I know my co-counsel and
16 counsel for the State's Attorney's Office had multiple
17 meet-and-confers, and we've sort of reached an impasse in terms
18 of what the State's Attorney's Office will produce in terms of
19 unredacted -- the unredacted Felony Review folder.

20 THE COURT: Is the privilege log attached to your
21 motion?

22 MS. BITOY: It is, Your Honor.

23 THE COURT: Okay. Let's see. Do you know which of
24 the exhibits is the log?

25 MS. BITOY: I believe it's Exhibit 3.

1 THE COURT: Yes, I see here. Okay.

2 And so I see there's a little bit of process
3 privilege that's asserted as well as attorney work product.
4 And a couple of references to HIPAA.

5 Okay. So what's the overall size of this file?

6 MR. LARIOS: I believe it's around 30 pages.

7 THE COURT: Okay. So, Mr. Larios, my suggestion, if
8 you want to stand on the privilege assertion, would be for you
9 to file a written response to the motion.

10 Since I have the privilege log, and since the file is
11 relatively small, I am going to ask that it be provided to
12 chambers for *in camera* review. That will be an *ex parte*
13 submission.

14 Since we're talking about claims of privilege, I am
15 not inclined, prior to making a ruling, to require any of that
16 be shared with the other parties. However, I think that with
17 the privilege assertions, it will be easier for me to make a
18 determination more quickly if we actually have the file.

19 I mean, I also see that there are several items that
20 were withheld based on both work product and deliberative
21 process privilege, so I'd like to get a better sense.

22 Obviously, the deliberative process privilege has
23 different parameters from attorney work product, and the
24 requirements for substantiating the two privileges are a little
25 bit different. So I think having the opportunity for *in camera*

1 review will make that a little bit easier for me.

2 How much time do you need in order to prepare a
3 written response to the motion that also would include
4 delivering to chambers for *in camera* review the file itself?
5 The unredacted file?

6 MR. LARIOS: If I could have two weeks, Your Honor?

7 THE COURT: Okay. That would take us until October
8 12th.

9 And when you're ready to deliver the potentially
10 privileged materials to chambers, you can actually reach out to
11 my courtroom deputy about the best way to do that.

12 If it's easiest to just hand-deliver a paper copy, we
13 will accept it in that format. But we also accept deliveries
14 to chambers through a Drop Box-type mechanism. And Laritza can
15 assist you with that, if that would be your preference.

16 MR. LARIOS: Okay. Perfect. Thank you, Your Honor.

17 THE COURT: You know, I don't know that a reply is
18 going to be necessary. I'll offer the opportunity for it.

19 You know, it's difficult, I understand, for the
20 moving party to reply when they don't have access to the actual
21 documents that are being withheld; but if the plaintiff or
22 defendants would like to reply once you've seen the response
23 brief, I'll give the parties an opportunity to do so by October
24 19th.

25 MS. BITOY: Okay. Thank you, Your Honor.

1 THE COURT: Okay. So that's the new motion.

2 I did want to circle back around to the pending
3 motion regarding the IDOC's subpoena and the audio recordings.

4 And I had a couple of questions for defense counsel
5 before I make a ruling. Just a couple of things that I wasn't
6 completely certain of.

7 First of all, as I understand it, the current motion
8 is narrowed down to just six witnesses.

9 And let me start by saying that I do believe that the
10 plaintiff has standing to file the motion to quash. And that
11 even though the privacy interests in recorded phone calls for
12 somebody, in particular, who's in custody and knows that the
13 calls may be listened to for, you know, the interests of the
14 institution, in order to advance, you know, safety or other
15 correctional purposes, among other things, there is still a
16 privacy interest there that's sufficient for standing to oppose
17 the motion.

18 And so I think that's pretty much been the consensus
19 of the courts in this district to consider the issue --
20 "consensus" may be a strong word, but certainly the majority
21 view, and is one that I share -- that I don't see any reason
22 that the plaintiff shouldn't be able to make this motion.

23 The other prefatory statement that I will make is
24 that, of course, just because information is produced in
25 discovery doesn't mean that it's actually going to be

1 admissible at trial, or something that's going to be usable in
2 connection with the litigation. The standards for discovery
3 are obviously different than the standards for admissibility.

4 Keeping all of that in mind, I had a question for the
5 individual defendants about your desire to get the recorded
6 calls for Jimmy Fletcher, Sr., the plaintiff's father, because
7 it doesn't seem that Mr. Fletcher, Sr. was identified as a
8 potential witness. Unlike Deborah Sanders who was identified
9 in the initial disclosures.

10 Why is it that the individual defendants have
11 included Jimmy Fletcher, Sr. on your list of people that you
12 think, you know, the recorded calls may be relevant here?

13 MS. BITOY: So Jimmy Fletcher had testified at
14 plaintiff's criminal trial, and so that's the reason that we
15 had identified him as someone with potential information that
16 we would be seeking his audio-recorded phone calls.

17 THE COURT: So did you ask for the recorded calls
18 or for everybody who was a witness at the criminal trial that
19 the call logs showed to have had phone calls with the
20 plaintiff?

21 MS. BITOY: Not every single person, Your Honor.
22 Just someone who we -- you know, Mr. Fletcher's father, and
23 since he was listed.

24 You know, everyone who testified at Mr. Fletcher's
25 criminal trial did not also have phone calls with Mr. Fletcher

1 at IDOC.

2 But Mr. Fletcher, Sr. testified as a witness for the
3 defense in Mr. Fletcher's 2005 criminal trial and has also been
4 listed in the IDOC records as having phone calls with
5 Mr. Fletcher.

6 That's the reason that we identified him as having
7 potential relevant information for purposes of our IDOC motion,
8 since, you know, Mr. Fletcher was --

9 THE COURT: But Mr. Fletcher, Sr. was not identified
10 in the plaintiff's disclosures as a potential witness.

11 MS. BITOY: Oh. Correct.

12 THE COURT: And what was this -- at a very high
13 level, the substance of his testimony at trial?

14 It indicates that, like the ex-wife, he testified
15 about the plaintiff's appearance at the time of the crime?

16 MS. BITOY: Correct, Your Honor.

17 THE COURT: Was he an alibi witness?

18 MS. BITOY: No. He wasn't as much of an alibi -- no,
19 he was not an alibi witness.

20 THE COURT: Did he have any contact with the
21 individual defendants or any of the other investigating
22 officers?

23 MS. BITOY: No, no. Not to my knowledge.

24 THE COURT: And no actual knowledge of the events
25 surrounding the murder?

1 MS. BITOY: No. No, that's not why he was called to
2 testify in the criminal trial.

3 You know, and we haven't deposed him or anything, so
4 I don't know the full scope of his knowledge related to the
5 case.

6 But, you know, that's not what he testified to in the
7 underlying trial.

8 THE COURT: I see. And Deborah Sanders, on the other
9 hand, was an alibi witness at trial; is that correct?

10 MS. BITOY: Correct, Your Honor.

11 THE COURT: And so how was it that she attempted to
12 provide an alibi --

13 MS. BITOY: That she was --

14 THE COURT: -- for the plaintiff?

15 MS. BITOY: -- with the plaintiff, and so she had
16 knowledge of where he was at the time, and so essentially
17 stated that they were together.

18 THE COURT: So the most direct kind of alibi
19 testimony that you can provide, "He was with me, so he didn't
20 do it." Okay. I got it.

21 So it seems to me that Mr. Fletcher, Sr. and Ms.
22 Sanders are differently situated in that Ms. Sanders actually
23 testified to have direct knowledge of whether or not
24 Mr. Fletcher actually committed the offense.

25 And unlike Mr. Fletcher, she's actually identified as

1 a witness in the plaintiff's disclosures.

2 And somewhat unlike Mr. Fletcher, probably
3 Mr. Fletcher would have presumably a much greater likelihood to
4 have things to talk about with the younger Fletcher while he
5 was in custody, other than this case.

6 It's father-son, so I would imagine you would expect
7 regular familial-type communications, offering support, updates
8 on what's going on with family, friends, other people that they
9 may know. Probably some discussion about what's going on in
10 the underlying criminal case.

11 But it seems to me that for Jimmy Fletcher, Sr., any
12 idea that they would be talking about things relevant to this
13 current civil case is pretty speculative. It doesn't seem like
14 there's any, you know, report that Mr. Fletcher, Sr. was
15 involved in some way in gathering affidavits, for example, to
16 contrast him with some of the other witnesses.

17 Am I missing something with respect to the relevance
18 of Mr. Fletcher and the sort of relative likelihood that he
19 would be speaking with his son about life in general as opposed
20 to matters related to his wrongful conviction?

21 MS. BITOY: No. I think you've covered everything,
22 Your Honor.

23 You know, you know, our position is what I just said.
24 It's -- you know, he testified at Mr. Fletcher's -- his son's
25 underlying criminal trial. Testified to his appearance and

1 things of that nature. And as he was a witness in the criminal
2 trial, he would have knowledge of what was going on at the
3 time, him speaking to Mr. Fletcher regarding his criminal case,
4 and things of that matter and of that nature.

5 And so, you know, it's just our position that that
6 would be relevant. And, you know, those phone calls may
7 contain relevant information for our case.

8 THE COURT: And what's the volume of calls between
9 the plaintiff and his father?

10 MS. BITOY: You know, I will have to check on the
11 exact number of phone calls. I'm sorry, I don't have the exact
12 number in front of me. I don't think it's very voluminous.

13 THE COURT: Okay. Let me ask plaintiff's counsel. I
14 think Ms. Garcia is on the line for that.

15 MS. GARCIA: Yes.

16 THE COURT: First of all, am I correct that you have
17 not identified the elder Mr. Fletcher as a potential witness in
18 this case? And at this point, you have no plans to do so?

19 MS. GARCIA: We have not. And we may introduce him
20 as a damages witness.

21 But, unfortunately, Mr. Fletcher, Sr.'s health is
22 pretty bad, so we're uncertain if he could actually sit for a
23 deposition in this matter, or give testimony.

24 So if he's able to, we may call -- we may list him
25 and call him just for the purpose of damages, but not for, as

1 you've been talking about, the facts of the case or alibis.

2 THE COURT: Okay. So for -- I am glad you raised the
3 issue of damages.

4 So Dawon Gardner, or Dawon Gardner -- I'm not sure
5 how the name is pronounced -- was listed as a damages witness
6 by the plaintiff. And then you just mentioned Mr. Fletcher,
7 Sr. as a potential damages witness.

8 What do you mean when you say "damages"? Is this a
9 situation where they're just going to potentially testify about
10 just the emotional distress or the current --

11 MS. GARCIA: Yeah.

12 THE COURT: How Mr. Fletcher is today versus how he
13 was 20 years ago as a person?

14 MS. GARCIA: Precisely. In this -- you know, we had
15 a deposition of Mr. Fletcher's current fiancee, who also was a
16 friend of his prior to his incarceration in this matter. And
17 as with, potentially, Mr. Fletcher, Sr., we would want to ask
18 him about -- you know, how the impact of getting a life
19 sentence for something that he didn't do impacted him, how he
20 changed over the years, how his demeanor was like when he was
21 incarcerated, what his demeanor was like when he was -- you
22 know, his conviction was vacated.

23 So we would specifically be looking at both his
24 emotional and mental health during that time period and after.

25 THE COURT: Okay. So given that the plaintiff would

1 be identifying these folks as witnesses, isn't that a way that
2 this case is distinguished from some of the cases that you
3 cited in your briefs where the defendants were just seeking all
4 of the recorded records; or if they named individuals, it was
5 based on the defendants' own speculation as to what the theory
6 might be? Whereas here, these are people, at least with
7 respect to Dawon Gardner and now, sort of, Jimmy Fletcher, Sr.,
8 that the plaintiff himself is actually identifying as somebody
9 who might be relevant?

10 MS. GARCIA: So forgive me, Your Honor. I haven't
11 had a chance to review the cases that we cited in our brief --

12 THE COURT: Yeah.

13 MS. GARCIA: -- recently. But I think that it's -- I
14 think we cite a few cases that specifically go towards this
15 particular situation, one in which -- I think it was *Simon*, I
16 believe. Let me see if I can find the actual --

17 THE COURT: Uh-huh.

18 MS. GARCIA: -- case heading. So it was a 2017 case
19 in front of the Northern District. And similarly, the
20 defendants had asked for just a slew of conversations over a
21 significant period on the basis that these were family members
22 who may have had some sort of information, whether it was, you
23 know, material about the incarceration or material about the
24 investigation, and this court found that that was not relevant
25 in that it was not only burdensome, but seeking privileged

1 information that didn't have direct bearing on the case.

2 So though I can review and answer this more fully, if
3 Your Honor would like, I don't think -- I think our case law is
4 on point here, and other courts in this district have found, in
5 similar situations, that the phone calls were not relevant to
6 litigation.

7 THE COURT: Okay. No, I don't think I need any
8 further research or submission on point. Certainly, I'd want
9 to, to the best I can, give the parties some direction today on
10 the motion so that you can proceed in getting what needs to be
11 gotten from the IDOC.

12 So let me start --

13 MR. MICHALIK: Your Honor, this is Paul --

14 THE COURT: -- with -- yes? I'm sorry. Who is this?

15 MR. MICHALIK: This is Paul Michalik on behalf of the
16 City.

17 I just wanted to respond to a point that Your Honor
18 was asking about with respect to the damages witnesses.

19 And one of the things that Ms. Garcia said is that
20 these witnesses would be testifying about the plaintiff's
21 demeanor when he was incarcerated versus, you know, afterward.

22 And to the extent that we could depose the damages
23 witnesses, you know, it would certainly be based on their
24 recollection, but what we would have if we had the phone call
25 records, we would have the plaintiff's very own words at the

1 time regarding what he was thinking, what his demeanor was.

2 It would really be the best evidence of that. And I
3 think that's why it's important for the damages witnesses in
4 terms of, you know, getting those particular phone calls.

5 That's all I wanted to say. Thank you.

6 THE COURT: Okay. And I assume, since the IDOC knows
7 about all of this, and they produced the call logs, that they
8 are maintaining all of the calls so that to the extent the
9 recordings would be disposed of in the ordinary course, that
10 that's not happening for Mr. Fletcher's calls.

11 Is that fair to say?

12 MS. BITOY: That's fair to say, Your Honor.

13 As far as we know, they -- the IDOC is in possession
14 of these calls. They just haven't produced them given the
15 litigation that's been going on right now related to that.

16 But yes.

17 THE COURT: Okay. So here's how I'd like the parties
18 to proceed.

19 So Dawon Gardner, who is the plaintiff's child, and
20 Jimmy Fletcher, Sr., who is the plaintiff's father, do not
21 appear to have any personal knowledge related to the crime that
22 spurred the original conviction or any misconduct by the
23 defendants. They also don't appear to have been involved in
24 any alleged misconduct on the plaintiff's part in trying to
25 influence witnesses in order to get affidavits to support the

1 position post-conviction. It would seem that the only real
2 relevance would be on this issue of damages.

3 It also would seem that both of these defendants are
4 available -- or both of these witnesses, I should say, are
5 available to be deposed so that counsel can get, you know, some
6 idea of exactly what they might say with respect to damages.

7 If their position on damages is simply that the
8 plaintiff was, for example, sad and despondent and frustrated
9 when he was in custody, and then when he was released, he, you
10 know, felt relief or he suffered PTSD, or whatever it might be,
11 I don't know that those are the sorts of damages testimony that
12 require, you know, getting into all of the phone conversations
13 between an individual and their child or their father,
14 especially in this case where one would expect that there would
15 be lots of completely innocuous and perfectly fine reasons that
16 someone would have conversations with their child or their
17 parent while they're in custody.

18 So with respect to those two of the six, Dawon
19 Gardner and Jimmy Fletcher, Sr., my ruling is going to be that
20 the current subpoena -- or that the IDOC will not be required
21 to produce that information for those calls.

22 But after those witnesses are deposed, once the
23 defendants have a more solid basis to know what sort of
24 testimony they might be offering, I would be open to revisiting
25 that decision. Because I think at this point, even though

1 they're potentially named as witnesses, it's just with respect
2 to the issue of damages without any specific factual, personal
3 knowledge that is likely to be illuminated by going through the
4 phone calls.

5 And I do think that while the privacy interests here
6 is less than it would be for somebody who was not on a recorded
7 line in a custodial setting, and that the privacy interest is,
8 you know, not really directly related, but only indirectly
9 related to the relevance and burden issues that govern the Rule
10 45 analysis, I do think it's worth taking into account here.

11 And I think the fact that there's this familial
12 relationship and nothing really specific related to how this
13 testimony is going to advance the fact-finding inquiry in this
14 case speaks to just whether going through those calls is really
15 proportional to the needs of this case.

16 So at this point, I am not -- I am going to order
17 that the subpoena to the IDOC not include the calls for those
18 two individuals. However, defendants may request them -- and
19 so without prejudice to them being requested -- if, after the
20 depositions, it becomes clear that there is something specific
21 there that you'd be looking for.

22 Now, the other witnesses are a little different in my
23 view.

24 Deborah Sanders, as I've mentioned, was identified as
25 a witness in the disclosures from the plaintiff. She was

1 somebody who purported to have firsthand knowledge of whether
2 or not the plaintiff actually committed a crime at the time.
3 So she's a little different. She did testify to that effect at
4 the trial. So she strikes me as different in that there is a
5 specific, particularized reason to want to seek her calls with
6 the plaintiff.

7 Similarly, with respect to Natasha Reeves, Jennifer
8 Blagg, and Yvette Loggins, each of those individuals has been
9 identified as potentially involved in applying pressure to
10 witnesses to get them to provide testimony or affidavits in
11 support of post-conviction or habeas relief, and I think that
12 actually goes very squarely to the circumstances that are at
13 issue in this case. On the one hand, we have the individual
14 defendants who are accused of wrongdoing in trying to secure
15 testimony; and then there's a suggestion that there was also
16 pressure from the other side involving, particularly in the
17 case of Ms. Friend, the same witness in that example.

18 So it seems to me that the defendants have provided
19 specific reasons with respect to those witnesses.

20 In the case of Ms. Sanders, she's actually identified
21 as having knowledge by the plaintiff.

22 But with respect to the other three, including Ms.
23 Reeves, as I understand it, the investigator who had spoken to
24 some of these witnesses, has provided some basis to think that
25 they may have been involved in trying to, you know, pay

1 witnesses not to testify, is one allegation, or pressure them
2 in order to provide an affidavit, et cetera.

3 Ms. Reeves is also identified as a damages witness.
4 So if she were completely similarly situated to Dawon Gardner,
5 my ruling would be the same as it was with respect to Dawon
6 Gardner. But Natasha Reeves has this additional issue of
7 having been identified as likely a person who allegedly told a
8 witness not to come to court to testify, and I believe also was
9 involved in trying to apply pressure to obtain post-conviction
10 testimony.

11 Now, Attorney Jennifer Blagg. She is, of course, a
12 bit differently situated than the other three witnesses that
13 fall into this category of potentially using coercive means in
14 order to obtain affidavits for use by the plaintiff in his
15 post-conviction proceeding.

16 And I appreciate the parties' points on both sides
17 about whether or not her communications with the plaintiff were
18 necessarily privileged or not privileged.

19 I believe, in general, that is a difficult argument
20 for the parties on either side to make blindly without having
21 access to the particular communications.

22 Just because an attorney is speaking to a client
23 doesn't mean that the communication is privileged. Even if
24 they are speaking about something that might be related to
25 representation, that doesn't mean that's necessarily

1 privileged.

2 And there is also a separate factual issue, I think,
3 here about whether or not the plaintiff actually made requests
4 for attorney-client calls consistent with the procedures that
5 have been submitted by the defendants as a supplement to their
6 motion.

7 What I would normally do in a civil case, where a
8 third party has potentially privileged information and has been
9 subpoenaed, is to have the third party provide the subpoenaed
10 information to the party that holds the privilege before
11 producing it to the other side, so that the party that holds
12 the privilege can make an informed decision about whether or
13 not to assert the privilege over those, in this case, calls,
14 but information, more generally.

15 In other words, it's entirely possible that upon
16 listening to some of the recordings, plaintiff's counsel may
17 determine that it actually doesn't have privileged information,
18 meaning it might not have communications for the purpose of
19 obtaining advice on the part of Mr. Fletcher, or it might be
20 something that really is completely irrelevant. Or, upon
21 matching up calls with dates, there might actually be a basis
22 to claim that Mr. Fletcher made a request for an attorney call,
23 but for whatever reason, it wasn't available to him.

24 Right now, the parties are arguing those points in
25 the abstract.

1 So I am inclined, with respect to the recordings
2 between Mr. Fletcher and Ms. Blagg, to follow a similar
3 procedure that I would in other cases under other
4 circumstances, which is to have the potentially privileged
5 recordings produced to plaintiff's counsel so that they have an
6 opportunity expeditiously to review those recordings and to
7 make an informed assertion of the privilege rather than arguing
8 in the abstract on a blanket basis that they're privileged or
9 they're not privileged.

10 Again, the relevance and the reason to even go into
11 this review of calls is, I think, based on the allegation
12 that's been made -- and, as I understand it, is based on some
13 information that the investigator has come up with --
14 suggesting that Mr. Fletcher's counsel or attorneys may have
15 pressured witnesses to make certain statements, in affidavits
16 or otherwise, in support of the post-conviction proceedings.

17 So I am not suggesting that in every circumstance,
18 somebody's communications with the counsel would be produced in
19 response to the subpoena for recordings, but I think here this
20 is a situation where there is a specific reason that the
21 defendants have for wanting to have access to the recordings
22 between the plaintiff and his counsel at the time, Ms. Blagg.

23 So the order will direct that the subpoena may
24 proceed and that compliance would be ordered subject to the
25 calls identified as being between Mr. Fletcher and Ms. Blagg

1 being produced, in the first instance, to plaintiff's counsel.

2 As the order of the privilege, plaintiff would then
3 have the opportunity to make an informed assertion, if it's
4 appropriate to do so, prior to them being produced.

5 I am going to stop there because I don't know the
6 volume of those calls, and I don't know if there's any
7 logistical or other reason why that's not a feasible way to
8 approach it. So I'll stop and see if plaintiff's counsel wants
9 to raise any particular reason why that's unworkable.

10 MS. GARCIA: No, Your Honor. That's fine.

11 THE COURT: Okay. Any concern from defense counsel
12 as to why that would be unworkable for the attorney calls to be
13 provided?

14 I assume from the call logs, and from the information
15 that's provided in the briefing, that you already know, pretty
16 much, which ones are the calls between Fletcher and Ms. Blagg.

17 MS. BITOY: That's correct, Your Honor. And we have
18 no, you know, problem with that procedure as well.

19 THE COURT: Okay. So yes. And so if, upon
20 listening, you know, plaintiff's counsel wants to, again, as I
21 said, make an informed privilege argument based on what's
22 actually in these communications, I think that's a different
23 issue.

24 Frankly, I would also be amenable at that point to
25 aversion of a relevance argument with respect to the

1 attorney-client communications. I just think they're
2 differently situated than the other calls.

3 And even the risk that these might be privileged
4 warrants some additional protections before they're produced,
5 even responsive to a third-party subpoena, and even in a
6 circumstance like this where there has been a claim made that
7 counsel was doing more than perhaps just making the right legal
8 arguments and doing ordinary investigation in connection with
9 securing the plaintiff's release.

10 So that's what I will memorialize in an order with
11 respect to the six.

12 I will say that I am glad that the defendants limited
13 the request just to six people that they could somewhat
14 articulate a reason for seeking the recordings of rather than
15 making a blanket request.

16 I know, initially, it was a blanket request. It was
17 winnowed down through the meet-and-confer process. I think
18 that is the correct approach. I would not have allowed the
19 subpoena to stand just to get all of the recordings because I
20 do think that would be quite disproportionate to the needs of
21 the case.

22 And so I appreciate the fact that defense counsel did
23 seek to limit it to six people that they could articulate a
24 reason for seeking the calls for.

25 Okay. So that will be how that motion will be

1 addressed.

2 Now, the parties have more time left in discovery,
3 though not a lot. Your fact discovery deadline is currently
4 November 30th.

5 Have the individual defendants spoken to the IDOC to
6 have a sense of when and how soon they'd be able to produce
7 information responsive to the subpoena?

8 MS. BITOY: We have not had a specific conversation
9 with the IDOC related to that, Your Honor. We have received
10 phone calls in other cases from the IDOC and generally were
11 able to get it in a fairly expeditious manner.

12 So we're not really concerned that it would take, you
13 know, a very long time once we're able to subpoena those calls.

14 THE COURT: Okay. So here's what I am going to do,
15 is I am going to ask for a status report from the parties.
16 Well, you know, I have a briefing schedule on this other motion
17 that's been set now.

18 Since I do have a briefing schedule on the other
19 motion, I think what I'd like to do is just go ahead and set a
20 further status hearing, in case I require any argument on the
21 motion directed towards the State's Attorney's Office as well.

22 So let's see if we can set a status for sometime
23 around the 1st of November, either the first week of November
24 or that following week.

25 Laritza, if you could take a look at -- and maybe the

1 week of Halloween. And let's see if we can find a status time.

2 And this is time that could also be used for argument
3 related to the new motion, if necessary. So let's give them a
4 time slot that's either a little bit bigger or at the end of
5 the call.

6 THE CLERK: Sure, Judge. We can do November 3rd at
7 11:00.

8 MS. GARCIA: That works for plaintiff as well.

9 MS. BITOY: That works for the officers, Your Honor.

10 MR. MICHALIK: Okay with the City as well. Thank
11 you.

12 THE COURT: Okay. Mr. Larios, are you still there?
13 And would you be available if I required argument on the motion
14 directed towards the State's Attorney's Office?

15 MR. LARIOS: Yes, Your Honor.

16 THE COURT: Very good. Okay. So that will be our
17 plan going forward.

18 Thank you for your time this morning, counsel.

19 MS. BITOY: Thank you, Your Honor.

20 MS. GARCIA: Thank you, Your Honor.

21 MR. LARIOS: Thank you.

22 MR. MICHALIK: Thank you, Your Honor.

23 (Proceedings concluded.)

C E R T I F I C A T E

I, Colleen M. Conway, do hereby certify that the foregoing is a complete, true, and accurate transcript of the Telephonic Motion Hearing proceedings had in the above-entitled case before the HONORABLE ANDREA R. WOOD, one of the Judges of said Court, at Chicago, Illinois, on September 28, 2022.

/s/ Colleen M. Conway, CSR, RMR, CRR

12/01/2023

Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

Date